

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Matter of)
)
NUCOM)
)
Petition for Reconsideration of Placement of)
Local Multipoint Distribution Service Licenses)
WPOH485, WPOH486, WPOH487, WPOH488,)
and WPOH489 into Termination Pending Status)
)

ORDER ON RECONSIDERATION

Adopted: January 15, 2014

Released: January 16, 2014

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we deny a request filed by NUCOM seeking reconsideration of our prior action placing NUCOM's Local Multipoint Distribution Service ("LMDS") licenses WPOH485 (Oneonta, NY), WPOH486 (Portsmouth, OH), WPOH487 (New Castle, PA), WPOH488 (Burlington, IA), and WPOH489 (Waycross, GA) ("Licenses") into termination pending status. We also note that the Licenses automatically terminated as of November 1, 2013.

II. BACKGROUND

2. On June 24, 1998, the Licenses were originally issued to NUCOM as a result of Auction No. 17.¹ At the end of the initial ten-year license period, by June 24, 2008, NUCOM was required to submit an acceptable showing to the Commission demonstrating it was providing "substantial service" in each licensed area.² Failure by any licensee to meet the substantial service requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.³

3. On October 10, 2007, NUCOM filed applications for extension of time to demonstrate substantial service for its LMDS licenses.⁴ On April 11, 2008, the Wireless Telecommunications Bureau

¹ See File No. 0000000022 (granted June 24, 1998); FCC Announces the Conditional Grant of 25 Local Multipoint Distribution Service Licenses, *Public Notice*, 13 FCC Rcd 17186 (WTB 1998).

² See 47 C.F.R. § 101.1011(a); see also Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12658 ¶¶ 261-262 (1997) ("*LMDS Second Report and Order*").

³ See 47 C.F.R. § 101.1011(a).

⁴ File Nos. 0003195288-0003195292 (filed Oct. 10, 2007).

(“Bureau”) granted the requests for extension of the construction deadlines filed by a large group of LMDS licensees – including NUCOM – to extend their deadlines to meet the substantial service requirements to June 1, 2012, resulting in a nearly four-year construction extension for each of these licensees.⁵

4. The Bureau found that these LMDS licensees faced factors beyond their control, including difficulties in obtaining viable and affordable equipment, that warranted an extension.⁶ In making this finding, the Bureau noted that the licensees seeking relief from the construction deadlines represented a majority of LMDS licensees for whom buildout requirements were approaching, and that they all faced these same basic obstacles to timely construction.⁷ Thus, these obstacles were not a product of an individual licensee’s short-sightedness or its unfortunate business decisions; rather, the difficulties in procuring the basic equipment necessary for LMDS operations were widespread, stemming from the state of the market. Based on the record evidence, the Bureau anticipated that various developments in the market – arising in large part from the rollout of new services that could provide opportunities for LMDS operations – would help rectify these difficulties. Thus, the Bureau found that NUCOM and others could potentially use their LMDS licenses to provide wireless backhaul services to licensees in the 700 MHz band, the Advanced Wireless Services-1 (“AWS-1”) band, and other bands suitable for mobile broadband service, all of which at that time had recently been auctioned, licensed, or put into use.⁸ The Bureau anticipated that these bands would develop robustly, along with other mobile and fixed wireless services, and that resulting opportunities for associated LMDS service (such as wireless backhaul) would help spur production of equipment designed for LMDS use and thus facilitate timely construction by NUCOM and the other LMDS licensees, under the extended buildout deadline set by the Bureau.⁹

5. On April 2, 2012, NUCOM filed applications pursuant to Section 1.946(e) of the Commission’s Rules seeking a further extension of time until June 7, 2013, to construct its five LMDS licenses.¹⁰ On May 14, 2012, NUCOM amended the 2012 Extension Applications to provide a copy of an equipment order.¹¹ On May 23, 2012, NUCOM amended the 2012 Extension Applications to provide additional legal argument in support of its request for more time.¹² On August 7, 2013, NUCOM amended the 2012 Extension Applications to request an extension until November 1, 2013.¹³ On August 15, 2013, the Bureau granted the 2012 Extension Applications, as amended, and extended the deadline for NUCOM to demonstrate substantial service to November 1, 2013.¹⁴

⁵ Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service, *Memorandum Opinion and Order*, 23 FCC Rcd 5894 (WTB 2008) (*LMDS Order*).

⁶ *LMDS Order*, 23 FCC Rcd at 5905 ¶ 24.

⁷ *Id.*

⁸ *Id.* at 5905 ¶ 25.

⁹ *Id.*

¹⁰ See File Nos. 0005145441-0005145445 (filed Apr. 2, 2012) (“2012 Extension Applications”).

¹¹ 2012 Extension Applications, NUCOM Equipment Order (filed May 14, 2012).

¹² 2012 Extension Applications, Supplement and Amendment to Request for Additional Time to Demonstrate Substantial Service (filed May 23, 2012).

¹³ 2012 Extension Applications, Amendment (filed Aug. 7, 2013).

¹⁴ 2012 Extension Applications (granted Aug. 15, 2013).

6. NUCOM was required to file a notification of completion of construction for each of the Licenses by November 16, 2013, or fifteen days after the November 1, 2013 deadline.¹⁵ If NUCOM had wanted additional time to demonstrate substantial service, it was required to have filed a Form 601 seeking an extension by November 1, 2013, the construction deadline.¹⁶ NUCOM did not make any filing with respect to the Licenses during this period.

7. When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in “termination pending” status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement.¹⁷ If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to “terminated” as of the buildout deadline.¹⁸ On December 11, 2013, the Bureau sent NUCOM license auto-termination letters and the Licenses entered termination pending status.¹⁹ Accordingly, on the same day, the Bureau provided public notice of the pending license terminations.²⁰

8. On December 26, 2013, NUCOM filed a petition for reconsideration.²¹ NUCOM reports, “NUCOM is in the process of completing its construction and coverage requirement and expect[s] completion before end of 2013.”²²

III. DISCUSSION

9. We must deny the Petition because NUCOM has not met the November 1, 2013 substantial service deadline and it has not explained why it failed to either meet the substantial service deadline or timely request a further extension of the deadline. Once a license enters termination pending status, a petition shall be granted only if the licensee demonstrates that it met the relevant construction deadline.²³ NUCOM admits that, as of the date it filed the Petition, it had not yet constructed facilities under the Licenses.²⁴ Furthermore, it has failed to properly request an extension of the substantial service deadline, and it has not requested a waiver of the substantial service deadline.²⁵ Without an extension or

¹⁵ See 47 C.F.R. § 1.946(d).

¹⁶ See 47 C.F.R. § 1.946(e).

¹⁷ See Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006) (“*Auto-Term Public Notice*”).

¹⁸ *Id.*

¹⁹ Auto-Termination Letters, Ref. Nos. 5704551-5704555 (Dec. 11, 2013).

²⁰ Wireless Telecommunications Bureau Market Based Licenses Termination Pending, Report No. 9205, *Public Notice* (Dec. 11, 2013) at 1.

²¹ Petition for Reconsideration (filed Dec. 26, 2013) (“Petition”).

²² *Id.*

²³ See *Auto-Term Public Notice*.

²⁴ See Petition.

²⁵ Because NUCOM has not properly requested an extension of the substantial service deadline, we need not decide whether we would have granted a timely request for extension. If a request for extension had been filed, we would have required an explanation as to why NUCOM was unable to construct when it had placed an equipment order in May 2012.

waiver, the Licenses automatically terminated, by operation of Sections 1.946(c) and 1.955(a)(2) of the Commission's Rules, on November 1, 2013.²⁶

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by NUCOM on December 26, 2013 IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the Universal Licensing System SHALL BE UPDATED to reflect that NUCOM's licenses for Stations WPOH485, WPOH486, WPOH487, WPOH488, and WPOH489 automatically terminated as of November 1, 2013.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
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²⁶ 47 C.F.R. §§ 1.946(c) (providing that if a licensee in the Wireless Radio Services fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires) and 1.955(a)(2) (cross-referencing Section 1.946(c) and reiterating that authorizations in the Wireless Radio Services automatically terminate without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements).